

ORIGINAL

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Before the
SURFACE TRANSPORTATION BOARD



Finance Docket No. 34255

PORTLAND & WESTERN RAILROAD, INC.
-LEASE AND OPERATION EXEMPTION--
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

MOTION TO COMPEL

ENTERED
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NOV 25 2002

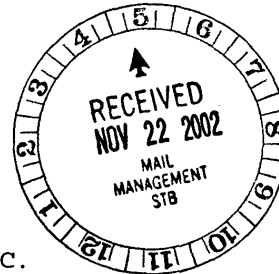
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Office of Proceedings

GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington DC 20036

Attorney for John D. Fitzgerald

Dated: November 22, 2002

Before the
SURFACE TRANSPORTATION BOARD



Finance Docket No. 34255

PORTLAND & WESTERN RAILROAD, INC.
~~-LEASE AND OPERATION EXEMPTION--~~
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

MOTION TO COMPEL

John D. Fitzgerald,^{1/} for and on behalf of United Transportation Union-General Committee of Adjustment (UTU/GO-386), submits this motion for an order compelling Portland & Western Railroad, Inc. (PNWR) to furnish the lease agreement(s) involved in this transaction. PNWR is unwilling to provide a copy of the lease, by letter dated November 8, 2002 (received November 12). Appendix 1.

PNWR on November 21, 2002, instituted this proceeding, by filing a Notice of Intent, that on December 6, 2002, PNWR expected to file a Notice of Exemption with the Surface Transportation Board (Board), pursuant to 49 CFR §1150.41, to exempt PNWR's lease and operation of the line of The Burlington Northern and Santa Fe Railway Company (BNSF), between Quinaby-Salem-Eugene, OR, a total of 76.75 miles. (Appendix 2). As part of the transaction, PNWR will grant so-called "incidental" overhead trackage rights to BNSF between Bush and Albany, OR, a distance of 27.9 miles, and PNWR

^{1/} General Chairman for United Transportation Union on lines of The Burlington Northern and Santa Fe Railway Company (BNSF), with offices at 400 East Evergreen Boulevard, Vancouver, WA 98660.

will grant trackage rights to Central Oregon & Pacific Railroad, Inc. (CORP) between Albany and Eugene, OR, a distance of 45 miles. (Appendix 2, n. 1).

Earlier, on October 26, 2002, PNWR filed with the Board certification that it had notified certain BNSF employees concerning the lease, pursuant to 49 CFR §1150.42(e). (Appendix 3).^{2/}

1. This motion to compel is timely. PNWR's refusal to comply with the discovery request was served November 8, 2002, but was not received until November 12, 2002. Moreover, PNWR did not formally institute a proceeding until its Notice of Intent (49 CFR §1150.45) was filed November 21, 2002. The Notice of Intent (Appendix 2) differs from the earlier notice to employees (Appendix 3). Of particular importance, the scope of the so-called "incidental" trackage rights is unmentioned in the notice to employees, but is featured prominently in the Notice of Intent. (Appendix 2, n.1).

2. The Board should compel production of the lease agreement(s) subject to any request for protective order. PNWR argues that the Board's regulations do not require submission of the lease, and that the lease terms are not relevant, in light of the October 28, 2002 notice given to BNSF employees. PNWR urges that questions should be addressed to BNSF labor relations person-

^{2/} Counsel for UTU/GO-386 in this matter is advised that PNWR wrote to the Board that PNWR "is serving" notice upon the national offices of all labor unions with employees on the affected lines. We are unable to locate the referenced letter in the Board files, although we understand an "is serving" letter was lodged with the Board; and are without sufficient information to know whether PNWR actually followed through so as to serve all labor organizations on all the affected lines.


nel. Finally, PNWR requests that UTU?GO-386 identify particular types of terms that might be relevant. (Appendix 1).

The lease (and any ancillary agreements) are highly relevant to an understanding of the transaction. One cannot fully appreciate the impact of the transaction upon employees without understanding the terms of the transaction. Here, many employees are involved, embracing at least three rail carriers. The practice of the Board has been to permit examination of the underlying transaction pursuant to any appropriate protective order. The so-called "commercial" terms of the transaction are important indicators as to the extent of the impact upon employees. The impact upon employees are part of the "public convenience and necessity." Such impact is not confined to job loss, but may embrace other conditions of employment, including safety concerns.

PNWR suggests that the issues may be addressed as a labor relations matter with BNSF management. However, heretofore major carriers have contended that the provisions of the non-carrier, and now carrier, acquisition class exemptions supersede, to a certain extent, collective-bargaining agreements. Accordingly, examination of the lease and any agreements between PNWR, BNSF, and CORP, and perhaps other carriers, relating to the transaction, are appropriate in these circumstances.

WHEREFORE, the Board should issue an order that PNWR produce a copy of the lease agreement(s).

Respectfully submitted,


GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington DC 20036

November 22, 2002

Attorney for John D. Fitzgerald

Certificate of Service

I hereby certify I have served a copy of the foregoing
upon all parties of record by first class mail postage-prepaid

Washington DC


Gordon P. MacDougall

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FOUR PENN CENTER PLAZA,
SUITE 200
1600 JFK BOULEVARD
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E-Mail: gge@ggelaw.com

WILMINGTON OFFICE:
1700 WEST FOURTEENTH STREET
WILMINGTON, DE 19806
(302) 655-8181

NOV 12 2002

ERIC M. HOCKY
emhocky@ggelaw.com

November 8, 2002

Gordon P. MacDougall, Esq.
1025 Connecticut Ave. NW
Washington, D.C. 20036

Re: STB Finance Docket No. 34255
Portland & Western Railroad, Inc.
-- Lease and Operation Exemption --
The Burlington Northern and Santa Fe Railway Company

Dear Gordon:

I have reviewed your request for a copy of the lease agreement with my client and with counsel for BNSF.

The lease contains confidentiality provisions that do not permit the terms to be made public or to be disclosed to outside parties. Further, the regulations applicable to exemptions under 49 U.S.C. §10902 (under which PNWR will be seeking an exemption) do not require that a copy of the lease be provided. Accordingly, at this time PNWR and BNSF are not willing to provide you with a copy of the lease.

Further, we do not understand what relevance the commercial terms of this transaction would have for your client. The notice that was given to BNSF employees in accordance with 49 C.F.R. §1150.42(e) (a copy of which you already have) clearly sets forth the jobs that will be available on PNWR and allows your client to determine the impact on the BNSF employees he represents. Any additional questions could be referred to the appropriate BNSF labor relations personnel. If you can identify particular types of terms that might be relevant to your client, I will re-

EMH/e
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APPENDIX 1
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Gordon P. MacDougall, Esq.
November 8, 2002
Page 2

evaluate your request with my client and BNSF.

I have confirmed that PNWR is not a class II carrier, and will not become one as a result of the transaction. However, we currently plan to comply with the additional notice requirements applicable to class II lease exemptions. Although the regulations do not require us to serve you with the notice of intent or the exemption notice, I will add you to my service list.

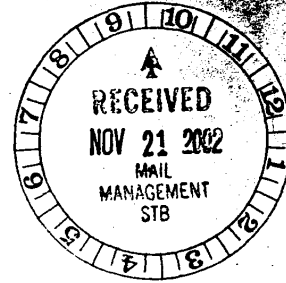
Very truly yours,



Eric M. Hocky

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206691



BEFORE THE
SURFACE TRANSPORTATION BOARD
STB FINANCE DOCKET NO. 34255

PORTLAND & WESTERN RAILROAD, INC.

-LEASE AND OPERATION EXEMPTION-

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

NOTICE OF INTENT

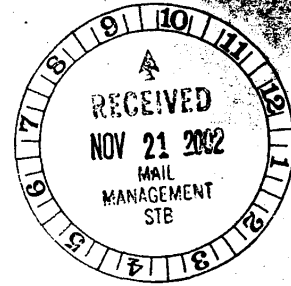
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Part of
Public Record

ERIC M. HOCKY
GOLLATZ, GRIFFIN & EWING, P.C.
213 West Miner Street
P.O. Box 796
West Chester, PA 19381-0796
(610) 692-9116

Attorneys for
Portland & Western Railroad, Inc.

Dated: November 20, 2002

BEFORE THE
SURFACE TRANSPORTATION BOARD
STB FINANCE DOCKET NO. 33734



PORTLAND & WESTERN RAILROAD, INC.
—LEASE AND OPERATION EXEMPTION—
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

NOTICE OF INTENT

Portland & Western Railroad, Inc. ("PNWR"), a Class III carrier, hereby gives notice of its intent to file an exemption notice pursuant to 49 C.F.R. §1150.41, to exempt from regulation under 49 U.S.C. §10902 its lease and operation of the line of railroad (the "Rail Line") of The Burlington Northern and Santa Fe Railway Company ("BNSF") between milepost 64.70 located between Quinaby and Salem and the End of Track at milepost 141.45 near Eugene, as shown on the map attached as Exhibit A.¹ PNWR expects to file the exemption notice with the Surface Transportation Board on December 6, 2002.

General Statement of Service Intentions

PNWR intends to provide local customers on the Rail Line with service 5 or 6 days per week. PNWR will interchange traffic with BNSF at Minto (near Salem) and at Albany.

The Minto interchange will include traffic destined for the portion of the Rail Line north of Salem, as well as points at and around Salem. This will reduce circuitous handling, and expedite service for this traffic. A local train out of Salem will operate 6 days per week and

¹ As part of the transaction, PNWR will grant incidental overhead trackage rights to BNSF over the rail line between Bush (milepost 68.6) and Albany (milepost 96.5), and to Central Oregon & Pacific Railroad, Inc. ("CORP") between Albany (milepost 96.5) and Eugene (milepost 141.5).

handle the local service on the northern end of the Rail Line. A second assignment will operate 5 days per week to handle local switching in the Salem area, as well as blocking cars to return to BNSF.

There will be switchers based in Albany that will operate 7 days per week to serve Albany industries, to block traffic returning to BNSF, and to handle BNSF cars being interchanged at Albany with the Albany & Eastern Railroad Company. PNWR will also interchange traffic with BNSF at Albany that is destined to, or originating from, industries located between Albany and Eugene, and which will be moved to and from Eugene 6 days per week. At Eugene, a switcher will operate 5 days per week to serve industries in the Eugene and Harrisburg areas, and block outbound traffic for Albany.

Car inventory and reporting will be performed by PNWR customer service in Albany. Maintenance of locomotives will be performed in Albany, and track maintenance will be performed by a gang headquartered in Albany.

General Statement of Labor Impacts

PNWR intends to hire approximately fifteen new employees to work on the line. It is anticipated that these employees will fill the following positions: Locomotive Engineers (4), Conductors (4), Machinist (1), Signal Maintainer (1), Carman (1), Customer Service/RMI Input (1), and Maintenance of Way Laborers (3). Employees of BNSF that work on the line, and the national offices of their unions, have received notice of the transaction in accordance with the STB's regulations.

Additional Information

PNWR hereby sets forth the information required to be included in its exemption notice under 49 C.F.R. §1150.43:

(a) The full name and address of Applicant are: Portland & Western Railroad, Inc., 650 Hawthorne Ave., SE, Suite 220, Salem, OR 97301; 503-365-7717.

(b) The name, address and telephone number of the representative of PNWR who should receive correspondence are: Eric M. Hocky, Esquire, Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381-0796; (610) 692-9116.

(c) PNWR and BNSF have entered into a lease agreement covering PNWR's lease and operation of the Rail Line.

(d) The current operator of the Rail Line is BNSF.

(e) Brief Summary of the Proposed Transaction:

(1) PNWR is leasing the Rail Line which connects to rail lines already operated by PNWR. Control of the Rail Line will add to PNWR's traffic base and will allow PNWR to route its traffic more efficiently. These benefits will allow PNWR to justify incurring the cost of the rehabilitation that the Rail Line needs. The railroad transferring the Rail Line is BNSF, 2500 Lou Menk Drive, Fort Worth, Texas 76131 (Attn.: Sarah Bailiff, Esq.).

(2) PNWR expects to commence operation of the Rail Line on or about December 27, 2002.

(3) The mileposts of the Rail Line are between milepost 64.70 between Quinaby and Salem and milepost 141.45 near Eugene, in the Counties of Marion, Linn and Lane, Oregon.

(4) The total mileage to be leased and operated is 76.75 miles.

(f) Attached as Exhibit A is a map of the Rail Line.

(g) PNWR certifies that its projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier.

APPENDIX 2
Page 5 of 11

Certificate of Service

As shown on the attached certificate of service, copies of this notice are being served on the Governor of Oregon, the Oregon Department of Transportation - Rail Division, the national offices of the labor unions with employees on the Rail Line, counsel for BNSF's local UTU chairman, and shippers representing at least 50 percent of the volume of local traffic and traffic originating or terminating on the Rail Line during the most recent 12 months for which data is available.

Respectfully submitted,



ERIC M. HOCKY
GOLLATZ, GRIFFIN & EWING, P.C.
213 West Miner Street
P.O. Box 796
West Chester, PA 19381-0796
(610) 692-9116

Attorneys for
Portland & Western Railroad, Inc.

Dated: November 20, 2002

APPENDIX 2
Page 6 of 11

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing notice of intent was sent by first class mail, postage prepaid, upon each of the following persons:

Office of the Governor
State of Oregon
State Capitol Building
900 Court Street NE
Salem, OR 97301-4047

Oregon Department of Transportation
Rail Division
555 13th Street, N.E., Suite 3
Salem, Oregon 97301-4179
Attention: Claudia Howells, Manager

Mr. Edward Dubroski
International President
Brotherhood of Locomotive Engineers
Standard Building
1370 Ontario Street
Cleveland, OH 44113

Mr. Mac A. Fleming, President
Brotherhood of Maintenance of Way
Employees
26555 Evergreen Road, Suite 200
Southfield, MI 48076-4225

Mr. Byron A. Bryd, Jr.
International President
United Transportation Union
14600 Detroit Avenue
Cleveland, OH 44107

Mr. W.D. Pickett, President
Brotherhood of Railroad Signalmen
601 West Golf Road, Box U
Mt. Prospect, IL 60056

Gordon P. MacDougall, Esq.
1025 Connecticut Ave. NW
Washington, D.C. 20036

Seneca Sawmills
P. O. Box 851
Eugene, OR 97440
Attn.: Richard Re

Georgia Pacific Corp.
Corporate Headquarters:
Georgia-Pacific Corporation
133 Peachtree Street
Atlanta, Georgia 30303

A&M Reload Inc.
P. O. Box 11255
Eugene, OR 97402
Attn.: Brad Asbury & Ron Mckern

Boise Cascade Corp.
1111 W. Jefferson Street
Boise, ID 83728-0001

Boise Cascade Corp. - Paper Sales &
Marketing
907 West Seventh Street
Vancouver, WA 98660

Weyerhaeuser Co.
P. O. Box 907
Albany, OR 97321

Cascade Warehouse Co
1330 Salem Industrial Dr. NE
Salem, OR 97303

Eagle Veneers
P.O. Box 288
Harrisburg, OR 97446

Eagle Veneer Inc.
P.O. Box 908
Grants Pass, Oregon 97528

Morse Brothers
P.O. Box 205
Harrisburg, OR 97446
23505 Peoria Rd.
Harrisburg, OR 97446

Morse Brothers
Corporate Administration
1300 E. Grant Street
Labanon, OR 97355

Albany Rocks Products (Morse Bros)
35973 Kennel Rd. S.E.
Albany, OR 97321

Salem Reed Plant (Morse Bros)
9710 Wheatland Rd.
Salem, OR 97303

States Industries Inc.
P.O. Box 7037
Eugene, OR 97401-0038

Kropf Feed & Seed
815 s. 2nd Street
Harrisburg, OR 97446

Grain Millers Inc.
315 Madison
Eugene, OR 97402

Emerald Forest Products Inc
PO BOX 2746
Eugene, OR 97402

Pope & Talbot Inc.
1500 S. W. 1st Avenue
Portland, OR 97201

Panolam Industries Inc.
3030 Calapooia Street S.W.
Albany, OR 97321-3840

Specialty Laminates
1740 West 5th Street
Eugene, OR 97402-4303

Truitt Brothers Inc.
P. O. Box 309
Salem, OR 07308-0309

Agri Trading Corp
P. O. Box 609
Hutchinson, MN 55355

D R Johnson Lumber Co.
P.O. Box 66
Riddle, Oregon 97469

Forest City Trading Group
10250 S.W. Greenburg Road
Portland, OR 97223

ISG Resources Inc.
136 East South Temple, Suite 1300
Salt Lake City, UT 84111

ISG Resources Inc.
Western Region Office
950 Andover Park East, Suite 24
Tukwila, WA 98188


ISG Resources Inc.
Northern Region Office
4034 North Euclid Avenue
Bay City, MI 48706

ISG Resources Inc.
Southern Region Office
3045 West 28th Street
Pine Bluff, AR 71603

Building Products Division
16745 West Hardy Road
Houston, TX 77060

Hampton Lumber Sales
9600 S. W. Barnes Road
Portland, OR 97225

Dated: November 20, 2002



Eric M. Hocky

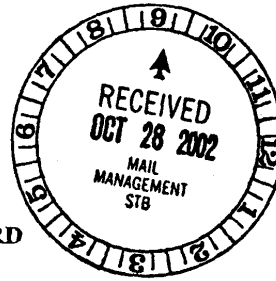
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MAP

APPENDIX 2
Page 10 of 11

EXHIBIT A

206516



Before the

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34255

ENTERED
Office of Proceedings

OCT 30 2002

Part of
Public Record

**PORTLAND & WESTERN RAILROAD, INC.
- LEASE AND OPERATION EXEMPTION -
THE BURLINGTON NORTHERN AND SANTE FE RAILWAY COMPANY**

**NOTICE OF INTENT DIRECTED TO EMPLOYEES OF
THE BURLINGTON NORTHERN AND SANTE FE RAILWAY COMPANY**

Pursuant to the regulations of the Surface Transportation Board (the "Board") at 49 CFR §1150.42(e), Portland & Western Railroad, Inc. ("PNWR") hereby gives notice of its intent to lease from The Burlington Northern and Santa Fe Railway Company ("BNSF"), the 76.75 mile line of railroad between milepost 64.70 between Quinaby and Salem, Oregon and milepost 141.45 near Eugene, Oregon. The lease is intended to be effective as of December 27, 2002.

APPENDIX 3
Page 1 of 3

As a result of the transaction, PNWR preliminarily estimates that following jobs will be available at the starting hourly rates of pay (depending on experience) indicated:

<u>Jobs</u>	<u>Range of Starting Rates of Pay</u>
4 Locomotive Engineers	\$ 11.48 - 13.75
4 Conductors	\$ 11.48 - 13.75
1 Machinist	\$ 11.48 - 13.75
1 Signal Maintainer	\$ 13.28 - 14.75
1 Carman	\$ 11.48 - 13.75
1 Customer Service/RMI Input	\$ 12.38 - 14.75
3 Maintenance of Way Laborers	\$ 11.48 - 13.75

Employees will be provided with Railroad Retirement, medical insurance, holidays, vacation and other benefits consistent with the benefits currently provided employees of PNWR with similar jobs.

PNWR is an equal opportunity employer. Employees will be selected based upon their experience and suitability for the jobs that may be offered. Successful applicants will be required to pass a pre-employment drug and alcohol screen, complete a medical questionnaire, and take a physical exam.

Applications for employment should be made by sending a letter and resume stating the applicant's experience, providing references for any employment held during the last five years and any rail industry employment held at any time. The applicant must be available to start work by the seventh day before the effective date of the lease. The letter should be sent by regular mail to Roberta Kane, Manager of Human Resources at 650 Hawthorne Avenue SE, Suite 220, Salem, OR 97301.

PORTLAND & WESTERN RAILROAD, INC.

Dated: October 25, 2002

By:


Larry Phipps
President & General Manager